

## DEPARTMENT OF FINANCE AND ADMINISTRATION

### ADMINISTRATIVE MEMORANDUM

300.31      TITLE: Criminal Background Check Policy  
ISSUING OFFICE: Director's Office  
DISTRIBUTION THROUGH: All DFA Employees (LEVEL)  
DATE ISSUED / REVISED: 12/05/05 REPLACES: \_\_\_\_\_ DATED: \_\_\_\_\_

The following policy and procedure provides guidance for implementing criminal background checks for applicants and current employees, in accordance with the DFA Anti-Fraud Policy, Act 2210 of 2005, and this general policy of the Department of Finance and Administration (DFA). This information will be applicable to all divisions, offices, and commissions within DFA.

The DFA Anti-Fraud Policy dated August 31, 2005 requires criminal background checks be performed on all applicants for designated financial positions that handle cash or negotiable assets. Further, it is the policy that applicants for designated information technology positions will be subject to criminal background checks. Act 2210 of 2005 requires criminal background checks on persons authorized to manufacture or produce driver's licenses or identification cards, including current and prospective employees. In addition, it is the policy of the department that current and prospective employees in designated management positions in DFA will be subject to criminal background checks. Requests for criminal background checks will be submitted through the DFA Human Resources Office. DFA HR will coordinate the background checks which will be conducted by the Arkansas State Police prior to hiring an applicant under this policy beginning with vacancies announced on and after January 1, 2006 and for current employees, under Act 2210 of 2005 or those in designated management positions, on or before January 31, 2006.

As a criminal background check is a condition of employment for designated positions, failure to comply will result in employment termination or disqualification.

DFA Administrators will designate the positions in their office that will be subject to the background check requirements of this policy by December 22, 2005. Administrators will designate the positions from a list provided by DFA Human Resources by Position Number, Title, Grade, Employee Name (or vacant), Personnel Number and Social Security Number. Administrators will be responsible for updating the list of designated positions annually or as needed and providing the revisions to DFA Human Resources. Extra-help positions may be designated initially or as needed. (Reference Position Control Reports by office generated by DFA Human Resources.)

Public notices of employment for positions that require criminal background checks are required. This will be part of the advertising process in DFA. Effective January 1, 2006, vacant designated positions requiring a criminal background check will be noted on the Job Vacancy Requisition Report (JVRR) submitted to DFA Human Resources.

### DEFINITIONS

The following definitions will apply unless the text clearly indicates otherwise:

- 1) Applicant: A person applying for employment.
- 2) Criminal Background Check: A criminal history report produced by the Identification Bureau of the Arkansas State Police.
- 3) Designated Position:
  - a) Management - A position that is determined by the DFA Director or his designee(s) in which the current or prospective employee serves at the administrator level or higher; a position in which the current or prospective employee is in the chain of supervision over positions designated for background checks as follows.
  - b) Driver's License/ID Card - A position that has the authority to manufacture or produce driver's licenses or identification cards, or has access to such ability.

- c) Financial - A position that handles cash and negotiable assets, including currency, checks, and other transferable assets that are readily converted to cash. This also includes any position that uses state credit cards, has the ability to make wire transfers, etc., in which funds can be accessed and/or utilized in an electronic format.
  - d) Information Technology - A position that has authority or capability via computer access to make changes to financial data, approve, authenticate or configure user security access or act in a capacity of information technology network, application or system administrator.
- 4) Employee: A person currently employed by the Department of Finance and Administration.
- 5) Hiring Official: A person authorized to make the hiring decision for the vacant position.

## **PROCEDURES**

The State of Arkansas Employment Application notifies applicants that some jobs may require background checks prior to employment or as a condition of employment and failure to meet these requirements may cause the applicant to be rejected or terminated from that job. Applicants affirm this notification by their signature on the State of Arkansas Employment Application.

All DFA applicants for positions that are designated positions for criminal background checks are required to sign a consent form for a criminal background check. For prospective employees, the consent form will be provided at the time of interview by the hiring official. The applicant will be required to sign the consent form at that time in order to be considered for employment for the position (see Attachment A). For current employees who fall under designated positions, a date will be established by the DFA Director for submission of the employee forms (see Attachment C) on or before January 31, 2006.

The hiring official will forward a copy of the signed consent form of the top applicant selected for the position to DFA Human Resources, either by fax, email or messenger/mail. The hiring official will maintain all signed consent forms of applicants interviewed until the hiring process has been completed. DFA Human Resources will submit an electronic request for a criminal background check to the Arkansas State Police.

If the criminal background check reveals no record, DFA Human Resources will provide the information to the hiring official. The applicant's signed consent form and the criminal background check results provided by DFA Human Resources will be placed in the hire packet of the applicant for processing (see Attachment B).

If the background check reveals a misdemeanor conviction of a criminal offense that is of a financial nature or any felony conviction, an applicant is disqualified for the designated position. DFA Human Resources will notify the applicant of the right to challenge the results through the Arkansas State Police and at the appropriate time, the hiring official will be notified of the final results of the background check (see Attachment B).

If the applicant does not challenge the results through the Arkansas State Police, the applicant will be disqualified from consideration for the position.

## **CURRENT EMPLOYEES AS APPLICANTS**

A current DFA employee applying for a designated position under this policy will be subject to the same requirements as any other applicant for the position. If the results of the background check disqualify the current DFA employee for the position, DFA Human Resources will notify the applicant/employee of the right to challenge the results through the Arkansas State Police and at the appropriate time, the hiring official will be notified of the final results of the background check (see Attachment B).

## **NOTIFICATION AND CHALLENGE**

If the background check reveals a financial misdemeanor conviction or a felony conviction, DFA Human Resources will notify the applicant or employee, as designated by the applicant/employee on the consent form, by telephone, letter, or other, of the disqualification for employment due to results of their background check. If the applicant/employee believes that there is an error in information revealed in the background check, the applicant/employee will be given two (2) working days to provide a written, signed explanation of the applicant's/employee's disagreement with the background check to DFA Human Resources. The applicant/employee will be provided a copy of the background check if he/she delivers the written explanation to

DFA Human Resources in person. The applicant/employee will be given an additional three (3) working days to resolve any background check disagreements with the Arkansas State Police.

Following the three (3) working day period, DFA Human Resources will obtain a new background check for the applicant/employee, at which time the results of the background check will be considered final and provided to the hiring official (see Attachment B).

## **REVIEW OF CURRENT EMPLOYEES WITH CRIMINAL BACKGROUND CHECK HISTORY**

At the time a current employee is subject to a criminal background check and the results reveal a financial misdemeanor conviction or any felony conviction which would disqualify the employee from their present position under this policy, DFA Human Resources will notify the employee of the right to challenge the results through the Arkansas State Police. A current employee whose background check is subject to further review will be notified of the review and given the opportunity to present information concerning the conviction to the Director or his designee.

Unless the conviction has been the subject of an official pardon, expungement, annulment, concealment, or similar official treatment, the Director or his designee may consider the following types of convictions for termination or disqualification:

- 1) Any felony conviction; or
- 2) Any misdemeanor involving theft, dishonesty, fraud or misrepresentation.

The Director or his designee will have the authority to waive a conviction, upon consideration of the following factors:

- 1) The age of the employee at the time of the offense;
- 2) The circumstances surrounding the offense, particularly any extenuating or mitigating matter;
- 3) The length of time since the offense;
- 4) Subsequent rehabilitative measures accomplished by the employee, including whether the employee was the recipient of parole or probation;
- 5) The number of other convictions by the employee;
- 6) Subsequent work history;
- 7) Employment references;
- 8) Character references; and
- 9) Any other information authorized by the Director or designee.

Notwithstanding the above, any conviction of the following offenses, or its equivalent if convicted in some state or federal jurisdiction other than Arkansas, unless the subject of an official pardon, expungement, annulment, concealment, or similar official treatment, will result in termination for good cause from employment or disqualification of the applicant:

- 1) Capital murder, as prohibited in A.C.A. § 5-10-101;
- 2) Murder in the first degree and murder in the second degree, as prohibited in A.C.A. § 5-10-102 and 5-10-103;
- 3) Kidnapping, as prohibited in A.C.A. § 5-11-102;
- 4) Rape, as prohibited in A.C.A. § 5-14-103;
- 5) Sexual assault in the first degree and second degree, as prohibited in A.C.A. § 5-14-124 and 5-14-125;
- 6) Endangering the welfare of a minor in the first degree and endangering the welfare of a minor in the second degree, as prohibited in A.C.A. § 5-27-203 and 5-27-204;
- 7) Incest, as prohibited in A.C.A. § 5-26-202;
- 8) Arson, as prohibited in A.C.A. § 5-38-301;
- 9) Endangering the welfare of an incompetent person in the first degree, as prohibited in A.C.A. § 5-27-201;
- 10) Adult abuse that constitutes a felony, as prohibited in A.C.A. § 5-28-103;
- 11) Theft of public benefits, a Class B Felony, as prohibited in A.C.A. § 5-36-202 and 5-36-203;
- 12) A felony due to theft, dishonesty, fraud, misrepresentation, possession or distribution of stolen property; and bribery.

At the appropriate time, the DFA Director or his designee, will review the results for determination and the

employee, supervisor and administrator will be notified of the disposition (see Attachment D). The DFA Director's decision will be final.

#### **POLICY REVISIONS AND CRIMINAL BACKGROUND CHECK FUNDING**

The DFA Director will direct the continuance or revision of the existing policy as necessary. If revisions to the policy occur, each Administrator will be responsible for designating positions in their office that meet the revised conditions as set forth by the DFA Director. The Administrator of the Office of Administrative Services may seek funding in the 2007-2009 biennium to facilitate the continuance and/or expansion of criminal background checks.

Attachment A – DFA Criminal Background Check Consent Form for Applicants

Attachment B – DFA Response to Hiring Official Regarding Applicant's Criminal Background Check Form

Attachment C – DFA Criminal Background Check Form for Employees

Attachment D – DFA Response to Supervisor and Employee Regarding Employee's Background Check Form